

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ePLUS INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09-CV-620 (REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
)	
Defendant.)	

**PLAINTIFF ePLUS, INC.’S MOTION *IN LIMINE* NO. 9 TO PRECLUDE DEFENDANT
LAWSON SOFTWARE, INC. FROM PROFFERING TESTIMONY, EVIDENCE, OR
ARGUMENT OF IMPROPER COMPARISONS BETWEEN ACCUSED PRODUCTS
AND COMMERCIAL EMBODIMENTS OF ePLUS, INC. AND ITS PREDECESSORS
FOR THE PURPOSE OF PROVING NON-INFRINGEMENT**

Plaintiff ePlus, Inc. (“ePlus”), by counsel, and pursuant to Fed. R. Evid. 402 and 403, respectfully moves *in limine* for entry of an Order excluding any testimony, evidence, or argument from Defendant Lawson Software, Inc. (“Lawson”) contending that Lawson allegedly does not infringe the patents-in-suit by virtue of making improper comparisons between the accused products and the commercial embodiments of ePlus and its predecessors. Established patent law holds that a patentee’s commercial embodiments are not relevant to infringement and should thus be excluded as irrelevant, improper, confusing to the jury, unfairly prejudicial, and having no probative value. This Court has already construed the meaning of the asserted claims pursuant to *Markman*, and the proper infringement analysis is to compare Lawson’s accused products with the asserted claims as this Court has construed them.

Accordingly, ePlus moves *in limine* to exclude any testimony, evidence or argument comparing the patentee's commercial embodiments to Lawson's accused products for purposes of infringement. The grounds for this motion are more fully set forth in the accompanying Brief in Support. A proposed Order is attached to this motion.

Respectfully submitted,

June 18, 2010

/s/

Henry I. Willett, III (VSB #44655)
Craig T. Merritt (VSB #20281)
CHRISTIAN & BARTON, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
Telephone: (804) 697-4100
Facsimile: (804) 697-4112
hwillett@cblaw.com
cmerritt@cblaw.com

Scott L. Robertson (*admitted pro hac vice*)
Jennifer A. Albert (*admitted pro hac vice*)
David M. Young (VSB #35997)
GOODWIN PROCTER LLP
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444
srobertson@goodwinprocter.com
jalbert@goodwinprocter.com
dyoung@goodwinprocter.com

Michael G. Strapp (*admitted pro hac vice*)
James D. Clements (*admitted pro hac vice*)
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
Telephone: (617) 570-1000
Facsimile: (617) 523-1231
mstrapp@goodwinprocter.com
jclements@goodwinprocter.com

Attorneys for Plaintiff, ePlus Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June, 2010, a true copy of the foregoing will be filed electronically with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Daniel McDonald, *pro hac vice*
William D. Schultz, *pro hac vice*
Rachel C. Hughey, *pro hac vice*
Joshua P. Graham, *pro hac vice*
Andrew Lagatta, *pro hac vice*

MERCHANT & GOULD

3200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Telephone: (612) 332-5300

Facsimile: 612) 332-9081

lawsonservice@merchantgould.com

Counsel for Defendant Lawson Software, Inc.

Robert A. Angle, VSB#37691

Dabney J. Carr, IV, VSB #28679

TROUTMAN SANDERS LLP

P.O. Box 1122

Richmond, Virginia 23218-1122

(804) 697-1238

(804) 698-5119 (Fax)

robert.angle@troutmansanders.com

dabney.carr@troutmansanders.com

Counsel for Defendant Lawson Software, Inc.

/s/

Henry I. Willett, III (VSB #44655)

Counsel for Plaintiff ePlus, Inc.

CHRISTIAN & BARTON, LLP

909 East Main Street, Suite 1200

Richmond, Virginia 23219-3095

Telephone: (804) 697-4100

Facsimile: (804) 697-4112

hwillett@cblaw.com